

U.S. Department of Labor

Board of Alien Labor Certification Appeals
800 K Street, NW, Suite 400-N
Washington, DC 20001-8002

(202) 693-7300
(202) 693-7365 (FAX)



Issue date: 13Sep2001

Case Number: 2001-INA-35
P2000-NY-02444571

In the Matter of:

Savoy Overseas Travel
Employer.

On behalf of:

Dinor Ilisirov
Alien.

Certifying Officer: Dolores Dehaan
New York, New York

Appearance:

Earl S David, Esq.
New York, NY
For Employer

Before: **Vittone, Burke and Chapman**

DECISION AND ORDER AFFIRMING
DENIAL OF CERTIFICATION

This case arose from an application for labor certification on behalf of Alien Dinor Ilisirov ("Alien") filed by Savoy Overseas Travel ("Employer") pursuant to § 212(a)(5)(A) of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1182(a)(5)(A) (the "Act"), and the regulations promulgated thereunder, 20 C.F.R. Part 656. The Certifying Officer ("CO") of the United States Department of Labor denied the application, and the Employer requested review pursuant to 20 C.F.R. § 656.26.

The following decision is based on the record upon which the Certifying Officer (CO) denied certification and Employer's request for review, as contained in the Appeal File ("AF"), and any written argument of the parties.

STATEMENT OF THE CASE

On December 3, 1997, Employer filed an application for labor certification on behalf of the Alien for the position of Manager, Travel Agency. (AF 1-11.) Four resumes of qualified applicants were sent to the Employer by the Department of Labor of the State of New York. The applicants were: Eli B. Ami (AF 23-24), Athena Boulam (AF 30), Patt McRory (AF 28-29), and

Jeffrey Metzger (AF 26-27). Employer was informed that the recruitment report should include proof of telephone calls and copies of certified mail receipts. (AF 22.)

In a recruitment report dated March 28, 2000, Employer stated that applicants Boulam and McRory did not respond to phone calls and letters; applicant Metzger was not interested; and applicant Ami's references were unverified. The recruitment report did not include any documentation of Employer's recruitment efforts. (AF 31.)

A Notice of Finding (NOF) was issued on June 15, 2000 indicating the CO's intention to deny the application under §656.21(b)(6) and §656.20(c)(8). (AF 39-37.) The CO found that Employer failed to document job related reasons for rejecting the four applicants. Specifically, the CO found that without evidence documenting recruitment efforts for applicants Boulam and McRory, Employer could not show good faith efforts to contact those applicants. The CO also found that Employer's unsupported assertions regarding applicants Metzger and Ami were too vague, because Employer failed to indicate whether any interviews took place, or what attempts were made to verify the applicants' references. The CO advised the Employer that it could cure the deficiencies by submitting evidence of Employer's attempts to contact applicants Boulam and McRory, and documenting how it reached the conclusions that led to the rejection of applicants Metzger and Ami.

Employer's Rebuttal dated August 23, 2000 (AF 46) indicates that applicant Ami's references were checked through Bell Atlantic, which showed no listing for Ami's business; applicant McRory contacted Employer and advised that she was not interested because of the size of the Employer's business; applicant Boulam called Employer indicating that she was going to remain in her job; and applicant Metzger was no longer interested because he had found another job. No evidence was submitted other than Employer's statement.

On September 11, 2000, the CO issued a Final Determination (FD) denying certification on the basis that despite the NOF's requirement to document that three U.S. applicants¹ were rejected solely for lawful job related reasons, the Employer did not provide any evidence supporting his assertions. (AF 53-54). The CO further noted that Employer's Rebuttal, without any explanation, contradicted Employer's recruitment report, which indicated that there were no contacts between Employer and applicants Boulam and McRory.

On October 13, 2000, Employer, in a single paragraph letter, requested a review of the denial of the labor certification application (AF 55), alleging only that there was no contradiction between the Rebuttal and the recruitment report.

¹ The CO in her FD found that Employer provided adequate reasons for rejection of Applicant Metzger, thus reducing the number of qualified U.S. applicants to three.

DISCUSSION

We note at the outset that Employer's request for review challenges the conclusion in the FD regarding the contradictions between the Employer's Rebuttal and Employer's recruitment report, but does not dispute the finding that the Employer failed to document job related reasons for the rejection of U.S. workers. Since this finding is undisputed, it is unnecessary to review the Employer's arguments about the apparent contradictions between its recruitment report and its rebuttal, and the FD should be sustained on those grounds. Under 20 C.F.R. § 656.26(b)(1), a request for review must clearly identify the particular labor certification determination from which review is sought, and must set forth the particular grounds for the request. It is well established that where the request for review does not set forth specific grounds for review and no brief is filed, the request for review will be dismissed. *North American Printing Ink Co.*, 1988-INA-42 (Mar. 31, 1988)(en banc); *Bixby/Jalama Ranch*, 1988-INA-449 (Mar. 14, 1990); *Rank Enterprises, Inc.*, 1989-INA-124 (Nov. 13, 1989); *The Little Mermaid Restaurant*, 1988-INA-489 (Sept. 1, 1989).

However, even setting this aside, the CO's denial of certification must be affirmed. An Employer must show that U.S. applicants were rejected solely for lawful job-related reasons. 20 C.F.R. § 656.21(b)(6). Additionally, Employer must demonstrate that reasonable good faith efforts to recruit U.S. workers have been unsuccessful. 20 C.F.R. §656.21(b)(1)(7). Bare assertions by Employer are not sufficient to carry his burden of demonstrating good faith recruitment. *Brilliant Ideas, Incorporated*, 2000-INA-46 (May 22, 2000)) *Inter-World Immigration Service*, 1988-INA-490 (Sept. 1, 1989). In order to establish a good faith effort at recruitment, an employer must provide proof of reasonable efforts to contact the applicants. *Garment Associates*, 1991-INA-143 (July 14, 1992) (emphasis added).

In the instant case, Employer's evidence consists of a one page recruitment report, which in relevant part states: "Athena Boulam did not respond to our phone calls and letters. . . . Patricia McRory did not respond to the phone calls and letters. . . . [and] Ben Ami's references were unverified."² (AF 31.) In *Yaron Development Co., Inc.*, 1989-INA-178 (Apr. 19, 1991) (*en banc*), the Board held that a recruitment report must describe the details of the employer's recruitment efforts to be sufficient. Here, with respect to Applicants Boulam and McRory, Employer's recruitment report is completely devoid of any details of attempts to contact these applicants.

The only other "evidence" submitted by Employer is its one page Rebuttal, which, in complete contradiction to the recruitment report, states: "Athena Boulam . . . called to advise us that she was staying in her job with JP Morgan. . . . Patricia Mc Rory . . . contacted us and advised us she was not interested. . . . Ben Ami . . . we checked Bell Atlantic and they had no listing" (AF 46.) Employer's counsel argues that the statements in Employer's Rebuttal are not contradictions, but are clarifications of previous statements. (AF 31.) To the contrary, we see room for only one interpretation of the statements in Employer's rebuttal, on the one hand, and the statements in Employer's recruitment report, on the other hand: they are flatly

contradictory. Either the applicants responded or they did not, and one cannot accept one set of statements without rejecting the other. These contradictions cast serious doubt on the credibility of the Employer.

The Employer was on notice, by virtue of the NOF, of the specific information and documentation that was required to rebut the NOF and cure the cited deficiencies. In response, the Employer provided summary statements, that, even if credible, are utterly unsupported by the requested details and documentation. Although a written assertion constitutes a documentation that must be considered, a bare assertion without supporting reasoning or evidence is generally insufficient to carry an employer's burden of proof. *Gencorp*, 1987-INA-659 (Jan. 13, 1988). The Employer failed to establish that it made a good faith effort to contact the U.S. applicants.

Finally, with respect to Applicant Ami, we concur with the CO's finding that Employer's statement in its Rebuttal is too vague. Additionally, Employer did not give Mr. Ami a chance to prove his references. An employer may not reject a U.S. worker by stating that he could not verify his or her work history where the employer never afforded the applicant an opportunity to provide the information. *Melillo Maintenance, Inc.*, 1991-INA-312 (Jan. 6, 1993).

Employer has not established that his reasons for rejecting these three applicants were lawful and job-related within the meaning of the regulations. *Peter Hsieh*, 1988 INA 540 (Nov. 30, 1989); *John & Winnie Ng*, 1990 INA 134 (Apr. 30, 1991). On this basis, we find the evidence is not convincing that Employer made a good-faith effort to contact and consider these applicants, and accordingly, conclude that labor certification was properly denied.

ORDER

The CO's denial of labor certification in this matter is hereby **AFFIRMED**.
SO ORDERED.

For the panel:

A

LINDA S. CHAPMAN
Administrative Law Judge

NOTICE OF OPPORTUNITY TO PETITION FOR REVIEW: This Decision and Order will become the final decision of the Secretary of Labor unless within 20 days from the date of

service, a party petitions for review by the full Board of Alien Labor Certification Appeals. Such review is not favored, and ordinarily will not be granted except (1) when full Board consideration is necessary to secure or maintain uniformity of its decisions, or (2) when the proceeding involves a question of exceptional importance. Petitions must be filed with:

Chief Docket Clerk
Office of Administrative Law Judges
Board of Alien Labor Certification Appeals
800 K Street, NW, Suite 400
Washington, D.C. 20001-8002

Copies of the petition must also be served on other parties, and should be accompanied by a written statement setting forth the date and manner of service. The petition shall specify the basis for requesting full Board review with supporting authority, if any, and shall not exceed five, double-spaced, typewritten pages. Responses, if any, shall be filed within 10 days of service of the petition and shall not exceed five, double-spaced, typewritten pages. Upon the granting of the petition the Board may order briefs.